

REQUEST FOR PROPOSAL

97-01

Personal Services Contract

PERFORMANCE AUDIT

OF THE

**WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION FERRY SYSTEM**

**Joint Legislative Audit and Review Committee
July 18, 1997**

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SECTION I

INTRODUCTION

I-1 PURPOSE

This Request for Proposal (RFP) is issued by the Joint Legislative Audit and Review Committee (JLARC), a performance audit and program evaluation committee of the Washington State Legislature. The committee's mission is to make recommendations to the legislature and state agencies that result in cost savings and/or improved performance in state government.

Legislation passed during the 1997 session of the Washington State Legislature (ESSB 6061) directs JLARC to conduct performance audits of:

. . . the department of transportation, focusing on its responsibilities for the highway and ferry systems; the department of licensing, focusing on the processes for motor vehicle and driver licensing functions; and the Washington state patrol, focusing on law enforcement operations, communications systems, and technology requirements.

This RFP focuses on the Washington State Ferry System (WSF), which is a division of the Washington State Department of Transportation (WSDOT).

The legislation directs that the performance audits “be conducted in accordance with government accounting standards prescribed by the comptroller general of the United States [and that they] be an objective and systematic assessment of the programs administered by the audited agencies, including each program’s effectiveness, efficiency, and accountability.” As such, the audit reports must include an attestation that the audit was conducted in accordance with applicable Government Auditing Standards.

The legislation further directs the JLARC to act as project manager for the audits, and to contract with a consultant or consultants to conduct the audits.

I-2 TEMPORARY ADVISORY COMMITTEE

The legislation referenced above also established a Temporary Advisory Committee for the performance audits to provide input to the JLARC on: 1) the identification of stakeholders, and 2) the performance audits’ scope and objectives. The committee is comprised of executive committee members of JLARC and the Legislative Transportation Committee, with

the State Auditor and the Director of the State's Office of Financial Management serving as ex-officio members.

The committee has met twice, and has provided input concerning the scope and scheduling of the performance audits. The committee will continue to meet as needed to fulfill its other mandates, including: receiving progress reports on the status of the audits; reviewing the preliminary and final audit reports; and facilitating communication of the audit findings to other members of the legislature.

I-3 EFFORTS TO SOLICIT STAKEHOLDER INVOLVEMENT

A list of potential audit stakeholders has already been developed. As part of the pre-audit survey phase, JLARC staff have met with some of these stakeholders and will be contacting the others via a questionnaire. In addition, JLARC staff are seeking input on issues relevant to this audit by conducting a survey which shall also provide an opportunity for public input. The results of this survey will be available on or about September 11, 1997. Follow-up, as appropriate, by the contractor is expected.

I-4 OVERVIEW OF THE WASHINGTON STATE FERRY SYSTEM (WSF)

WSF, with its 25-boat fleet (including three passenger-only vessels) is the largest ferry system in the United States. The system makes over 400 trips per day, carrying commuters and vacationers to islands and peninsulas throughout Puget Sound. The system transports over 10 million vehicles a year, with 3.3 percent of these vehicles measuring 20 feet or longer (commercial trucks or large motor homes). In 1995, 24,178,852 people rode the ferries. The fleet services ten routes at twenty terminals sites, averaging almost 65,000 passengers per day. According to WSDOT, Washington State Ferries is the state's number one tourist attraction and its second largest transit system.

The ferry system employs about 1,500 people and has a current biennial budget of approximately \$492 million. The operating budget is currently \$267 million; with 60 percent of the total operating revenue recovered from fare box revenues.

Washington State Ferry System Mission Statement:

Business Definition: *Washington State Ferries is in business to provide marine mass transportation linkages for people and goods throughout the greater Puget Sound regions and Vancouver Island.*

Guiding Principles: *Safety, Customer Service, Excellence, Public Trust, Respect for others, Partnerships.*



History of the Washington State Ferry System:

Before 1951, travelers sailed with the private "Puget Sound Navigation Company" or one of the smaller "mosquito" fleets carrying passengers and cargo on the inland waters. Labor problems were one reason for state involvement in the ferry business. In the late 1940s, ferry workers' unions succeeded in getting higher wages at Puget Sound Navigation, also called Black Ball, the largest provider of service on the sound. The company then asked the State Highway Department for a 30 percent fare increase to make ends meet. The state approved only a 10 percent increase, and on March 1, 1948, the private ferry company tied up its boats, stopping much of the cross-sound service.

State officials bought out Puget Sound Navigation for \$5 million, taking ownership of 16 ferries and 20 terminals. On June 1, 1951, the Washington State Ferry System began service.

The state ferry system has replaced several of the ships from the original fleet. In 1953, the State approved a contract with Puget Sound Bridge and Dredge Company for a 100-car, 1,000 passenger ferry--the *Evergreen State*. In 1967, four "Superferry" boats were launched: the *Hyak*, the *Kaleetan*, the *Yakima* and the *Elwha*, each with

capacity for 160 cars and 2,500 passengers.

In 1973, two "Jumbo" Class Ferries, the *Spokane* and the *Walla Walla*, were added to Seattle-Bainbridge Island run. Each has a capacity of 206 cars and 2,000 passengers.

In the early 1980s, six new ferries were commissioned to improve operations and to replace old boats, some of which had been on the water since the days of the Puget Sound Navigation Company. The six--the *Issaquah*, *Kittitas*, *Chelan*, *Kitsap*, *Cathlamet*, and *Sealth*--each carry 1,200 passengers and 100 to 130 cars. They are the **Issaquah Class** boats.

The smallest car ferry in the fleet is the *Hiyu*, which carries 40 cars and 200 passengers.

New Ferry Construction:

Three new “Jumbo II” ferries, designed for 218 cars and 2,500 passengers, are now under construction. The ferry system has received from the State Legislature authorization to spend \$210 million to build these vessels to meet the current and future needs of the growing population of urban commuters in central Puget Sound. The first of the new “Jumbo II” ferries--The *Tacoma*--is nearing completion. Other vessels proposed in this series include the *Wenatchee* and the *Puyallup*.

Ferry Usage and Congestion:

August is the ferry system's busiest month, with almost 100 percent capacity on many routes. Urban commuters in central Puget Sound use the ferries as transit to jobs and services in the Seattle Metropolitan Area. Over 11,000 people walk on the boat in Bainbridge Island in the morning and travel to Seattle to work--41 percent of the riders on this route are walk-on commuters.

Over 50 percent of the ridership on the Seattle/Bremerton route walk on the boat. Walk-on commuters are encouraged by the ferry system, with low fare commuter books (cost per ride) and ferry runs that meet transit connections. Recognizing the growth in commuter traffic, ferry officials have proposed an expansion of the fleet and service program with the addition of “Passenger Only Fast Ferries” over the next six years.

Organization

Although governed by an independent transportation commission, the WSF is part of the executive branch of state government. As a state agency, board members and staff are required to comply with all statutory requirements and rules established for all agencies, officials, and employees in the performance of their public duties.

SECTION II

STATEMENT OF WORK

II-1 SCOPE OF WORK

The Firm shall objectively and systematically examine the WSF to provide an independent, comprehensive audit of operating and capital improvement program performance.

II-2 SERVICES TO BE PROVIDED

The Firm shall use judgment, experience and creativity in conducting this performance audit. The performance audit shall identify those activities and programs that should be strengthened, those that should be abandoned, and those that need to be redirected or have other alternatives explored.

The Firm shall consider and appropriately respond to public comments solicited and received by the Joint Legislative Audit and Review Committee regarding this performance audit. A public comment survey report will be completed by JLARC and will be made available to the Firm on or about September 11, 1997.

The Firm may be required to attend public meetings and will be required to provide oral briefings and written reports to members and staff of the Joint Legislative Audit and Review Committee. In addition, the Firm must meet with representatives of the Washington State Ferry System and with various stakeholders as needed.

Technical Review Advisory Committee

The Firm shall establish and coordinate a "Technical Review Advisory Committee" consisting of key stakeholders including the WSF representatives, regional shipyard managers, marine industry design professionals and other delegates as may be proposed by JLARC. The purpose of the Technical Review Advisory Committee will be to provide a forum where different points of view can be expressed concerning technical matters related to data and assumptions used in Washington State Ferries' operational and capital planning, and in the Firm's use of data and assumptions during the performance audit. The Firm will also seek comments from the Technical Review Advisory Committee on the preliminary audit report findings and recommendations, and on the Washington State Ferries' responses to those findings and recommendations.

Specific Performance Audit Issues Identified by the Legislatively Mandated Temporary Advisory Committee and JLARC

The performance audit shall address, at a minimum, the following issues. Potential measurements (or audit criteria) and approaches are listed under each issue. See V-4 Section 3: Technical Proposal, for instructions concerning how to use these potential measurements and approaches.

- a. **Has WSF complied with the recommendations of the 1991 Booz-Allen and Hamilton Vessel Construction and Refurbishment Study? Over the past six years, do vessels that have been modernized under the refurbishment program demonstrate significant improvements in service reliability as compared to their condition before refitting? Are vessels that have been modernized comparable in service reliability to newer vessels? Does the performance of refit ferries result in net operating savings to the ferry system; and how do each of the major renovation systems contribute to any net savings or increased costs? Are the benchmarks and standards used to calculate the performance of modernized vessels or their components appropriate?**

Potential measurement and approach: Review of the findings of the 1991 Booz-Allen and Hamilton study of vessel refurbishment programs and determination of agency compliance with that study's findings and implementation steps. Analysis of performance in comparison to industry standard benchmarks for ferry vessel performance and reliability. Analysis of the economic life cycle assumptions used by the ferry system in comparison to industry standard benchmarks for each vessel after its proposed refit. Comparison of the methods used by WSF to project the performance of refurbished vessels with industry standards and comparison with current industry practice. Analysis of the methods, guidelines and benchmarks used to assess performance in the various components of refit vessels. Comparison of performance of the various components, such as (1) basic hull repairs, and (2) electrical, engine and running system repairs and replacements, with industry standard benchmarks, appropriate industry guidelines and with marine safety regulations.

- b. **Since 1991, has WSF implemented vessel procurement procedures that maximize cost-effective fleet preservation and vessel maintenance; and that ensure the lowest cost for new ferry construction? Is the ferry system modernization program appropriate given industry standard estimates for the useful life of a marine vessel? What is the ferry system's performance in controlling cost overruns and delays?**

Potential measurement and approach: Determination of whether the costs associated with ferry preservation and restoration are justified in terms of ferries' respective useful economic lives. A determination and analysis of the extent of cost overruns and delays for each of the ferry renovation projects undertaken to date. Analysis of the factors that contribute to cost overruns and delays in returning vessels to service; and identification of actions the ferry system can take to improve ferry renovation performance.

- c. **Is the current level of ferry system in-house design and construction support appropriate? Which design or construction functions could be performed by private engineering firms and shipyards? What procedures and procurement strategies are used by the ferry system to share the risk of project performance between the state and private shipyards in the implementation of contractual work? To what extent does the ferry system rely on contracting for marine design and capital management engineering? Do outside contracts duplicate ferry system in-house staff resources? How does the ferry system assign design work between department staff and consultants?**

Potential measurement and approach: Determination of the comparative cost of outside contracting versus the current practice of extensive in-house engineering work. Review of statutes and ferry system policies regarding the role of consultants; and an assessment of the competitiveness of consultant procurement practices. Analysis of the use of consultants and their effectiveness in comparison with other large public ferry systems, and as compared to other transportation agencies of similar size or with comparable capital improvement programs.

- d. **How accurate have the ferry system long-range plan recommendations for terminal and vessel investments been with current demographic trends and service demands? Has the ferry system factored the impacts of private or local government competition in planning the new Passenger Only Fast Ferry System? Has the ferry system accurately projected long-term construction and operating costs in its financial projections? What are the most critical variables and cost factors that drive the long-range planning process?**

Potential measurement and approach: Review of ferry system fleet restoration and construction projects and terminal plans and a comparison with current demographic projections for the counties bordering Puget Sound and with projections for tourism and other factors of service demand. Evaluation of private and local government

ferry programs such as the West Seattle Passenger Ferry and assess the likely impact on current or projected ridership. Determination of the sensitivity of ferry service models to passenger growth assumptions.

- e. **Based upon vessel service logs, safety records and information provided by stakeholders, is there a need for the entire Washington State ferry fleet to be systematically examined in drydock by an independent marine consultant in order to determine the safety, reliability and expected service-life of each vessel? Are major maintenance investments in older ferries reasonable and consistent with industry standards for vessels with similar size and complexity?**

Potential measurement and approach: Review of vessel service logs, safety records and information provided by stakeholders. Analysis of the effectiveness of the major maintenance and refurbishment programs established to modernize the ferry system, in comparison with industry standards for determining the useful life and eventual replacement of marine vessels. Evaluation of marine safety standards and the status of waivers granted by the US Coast Guard and the likely impact on future fleet deployment. Determination of whether cost and performance estimates for fleet modernization are being achieved. Determination of the need for additional, third-party vessel inspections as part of a follow-up effort to this performance audit.

- f. **Is the administrative structure of the ferry system appropriately sized as compared to other public ferry operations? Over the last ten years, has administrative staff growth been proportionate to growth in other, direct service areas? To what extent has growth in administrative staff been justified by measurable workload growth? Is the overall level of management and support staffing appropriate?**

Potential measurement and approach: Evaluation of the ferry system structure and operations, including a review of staffing and related workload growth over the past ten years. Analysis of staffing increases directly resulting in increased boat service hours, compared to other administrative and capital program management staffing changes during the past ten years. Analytical comparison of administrative and support staffing allocations with other public ferry agencies.

- g. **Does the ferry system efficiently manage automobile traffic in its staging, loading and terminal traffic management procedures? Do**

terminal and dock traffic capacity limitations affect ferry schedules or the efficient use of ferry capacity? Will surface transportation and terminal facilities be adequate to support the larger new ferries? Has the ferry system adequately planned terminal and support facilities for the proposed new Passenger Only Fast Ferry System? Does the ferry system own or lease enough waterfront acreage to expand terminal and vessel support facilities as needed?

Potential measurement and approach: Assess the condition and capacity of terminal operations to load and unload ferries. Review procedures and processes used to manage surface traffic at terminal facilities. Inventory ferry system ownership or control of waterfront property and assess opportunities for planned expansion. Evaluate whether ferry capacity is underused because of vehicle or passenger loading constraints.

- h. Based on the ferry system mission statement, and related goals and objectives, what is the appropriate service level for existing and planned routes? How much excess capacity is incorporated into the ferry system deployment plan to meet peak, basic service demands (non-tourist peak capacity)? Does the ferry system have a clearly articulated mission statement and valid and reliable performance objectives to allow a determination of an “appropriate” service level?**

Potential measurement and approach: Identify appropriate public or private sector benchmarks for measuring Washington’s service levels, including wait time, user cost, service frequency and other service indicators. Evaluate peak nontourist service levels to peak tourist service levels over the next twenty years. Evaluate service-level benchmarks against the mission statement, goals and objectives for the ferry system.

- i. Does the ferry system employ appropriate procedures for vessel operational support; including, but not limited to, fueling, water, sewage and hazardous materials management procedures? What is the cost impact of compliance with environmental requirements and regulations on the ferry system? Are there opportunities to provide vessel operational support services more efficiently? Do ferry system managers encourage and use suggestions and recommendations to make vessel operational support operations more efficient?**

Potential measurement and approach: Analysis of the vessel operational support expenses for operating the ferry system, and

comparison with other large public ferry systems. To the extent possible, determination of which vessel operational support costs have the greatest impact and offer the most opportunity for improved cost effectiveness. Comparison of Washington's vessel operational support costs and quality with comparable maintenance services in other states that have contracted out. Determination of whether there are potential cost and/or efficiency savings that could be achieved by contracting some or a portion of vessel support services, or by other means. Assess process for receiving and using suggestions and recommendations for improvements.

j. Has the ferry system adequately planned for life-safety or environmental emergencies?

Potential measurement and approach: Review of ferry system emergency management plans and an assessment of their adequacy to cover issue (judged by implementation of the plans, if applicable). Determination of the extent that the plans have been coordinated with other emergency management service providers such as the Coast Guard, trauma centers and other agencies.

k. Should specialized ferry services such as international route service or the passenger only ferry programs be provided by local governments and/or the private sector instead?

Potential measurement and approach: In order to provide information to the legislature regarding this policy decision, conduct the following analysis: (1) Analysis of statutes governing the state ferry system to determine opportunities for local governments or private operations to provide ferry service; (2) Assessment of current local government and private ferry operations serving Puget Sound; (3) Comparison of total net owning and operating costs of the ferries system's international route service to its domestic route service; and (4) Determination of the net owning and operating costs of the passenger only service.

l. Are the radio and electronic vessel communications and electronic tracking systems used by the ferry system adequate? What is the degree to which these technologies are or are not utilized?

Potential measurement and approach: Assessment of the technological capabilities of the ferry system radio networks and tracking systems. Determination of how well the systems are integrated into ferry operations. Evaluation of available redundant systems for emergency use. Determination if the systems use current

technology, and if the systems used are compatible with those used by other emergency management and transportation agencies.

- m. Does the ferry system have adequate and appropriate contractual agreements for all agent services?**

Potential measurement and approach: Identification of all agent services and a determination of whether all agent services have contractual agreements. Assessment of whether the contract terms and conditions should be amended or updated.

- o. Have terminal utility costs increased faster than the rate of inflation, or disproportionately higher than for other utility customers in the same service class?**

Potential measurement and approach: Determination of terminal facility charges and rates. Determination of whether the ferry system receives or qualifies for commercial or industrial utility rates for power, water and sewerage at its facilities, and the financial impact thereof.

- p. What strategies and facilities are in place for maintenance support of vessels and terminals? What is the long-term viability of the Eagle Harbor operations?**

Potential measurement and approach: Review of Washington State Ferry System maintenance support facilities, including: an assessment of work capacity, useful life of the facilities, expansion potential, community support, environmental compliance and adequacy as compared to appropriate industry benchmarks. Assessment of opportunities for private industry involvement in maintenance support.

- q. Are there capital investments in fleet and terminal equipment that could be made to enhance operational support?**

Potential measurement and approach: Analysis of whether maintenance associated with planned preservation and improvement projects are adequately accounted for in the planned maintenance program; and whether planned maintenance activities are adequately accounted for in the preservation program. Determination of any likely operating savings which could be found as a result of capital investments in the preservation program.

- r. **Does the ferry system adhere to personnel system requirements and provide essential employee training, including training needed to comply with regulatory agency mandates?**

Potential measurement and approach: Evaluation of the personnel training and development system in place at WSF. Assessment of policies and human resource procedures in place for performance evaluations, classification and job descriptions, salary adjustments, employee grievances and complaints, recruitment and selection, and employee training and development. Determination of the adequacy of funding of personnel training and development programs. Evaluation of the ferry system's conformance with training and development system plans, and the relationship of the plans to the system's performance objectives and actual operating performance.

- s. **Has the ferry system made appropriate investments in computer and information management systems?**

Potential measurement and approach: Assessment of the technological capabilities of the ferry system computer and telephone systems. Determination of how well the systems are integrated into ferry operations. Evaluation of available redundant systems for emergency use. Determination if the systems use current technology, and if the systems used are compatible with those used by other emergency management and transportation agencies. Evaluation of opportunities for further efficiency. Assessment of the adequacy of the information management systems for public access to ferry information and services.

- t. **Does the ferry system have a maintenance and systems development program in place to sustain the information management systems and to prevent obsolescence?**

Potential measurement and approach: Review of the information management and communications equipment replacement and modernization practices and policies for the ferry system. Assessment of the long-term adequacy of the technological capabilities of the ferry system computer and telephone systems. Evaluate long-term demand for public access to ferry information and services.

- u. **What is the salary setting and dispute resolution process for WSF employees, and can this process be improved to better meet identified objectives?**

Potential measurement and approach: Review of historical information regarding WSF's creation, and the salary setting and

dispute resolution processes and objectives for WSF employees, including the role and functions of the Marine Employees Commission. Analysis of current law, regulation, policies and practices related to salary setting and resolution. Evaluation of how well the current processes meet the identified objectives. Identification of options for better meeting stated objectives. Identification of barriers and risks associated with options.

General Performance Audit Issues Identified by the Washington State Legislature

The original mandate for the transportation performance audits (ESSB 6061) included the following objectives,¹ which were subsequently deleted by the Governor's veto. Nevertheless they remain the original legislative intent. In addressing the specific audit issues referenced above, the following objectives shall also be addressed, *as appropriate*:

- For each function, activity or program, identify associated costs and full-time equivalent staff;
- Determine the extent to which the particular activity or function is specifically authorized in statute or is consistent with statutory direction and intent;
- Consider whether the purpose for which the program was created is still valid based on the circumstances under which the program was created versus those that exist at the time of the audit;
- Determine whether the function, activity or program is achieving the results for which it was established;
- Identify any duplication of services with other government programs or private enterprises or gaps in services;
- In the event of inadequate performance by the program, identify the potential for a workable, affordable plan to improve performance;
- Identify, to the extent possible, the causes of any program's failure to achieve the desired results and identify alternatives for reducing costs or improving service delivery, including transferring functions to other public or private sector organizations; and

¹ Some of the objectives that would have applied to a comprehensive audit of the Department of Transportation, or which are already deliberately addressed in the Specific Performance Audit Issues Identified by the Temporary Advisory Committee and JLARC, have been excluded from the list of General Performance Audit Objectives.

- Develop recommendations relating to statutes that inhibit or do not contribute to the agency's ability to perform its functions effectively and efficiently, and whether specific statutes, activities, or programs should be continued, abandoned, or restructured.

Past State Auditor Findings

As an agency of the state of Washington, the WSF receives an annual financial and legal compliance audit by the State Auditor's Office in conjunction with the statewide single audit. In each of the past four consecutive years, the ferry system has received substantial findings or recommendations for management improvement. This performance audit, to the extent possible, shall not duplicate the scope of this annual statewide audit; but shall evaluate whether any of the ongoing problems identified by the State Auditor are negatively impacting the State Ferry System in any of the areas of this performance audit. These State Auditor audits are referenced at the end of this section of the RFP, and the audit reports can be accessed electronically at the JLARC website: <http://www.leg.wa.gov/www/lbc/>.

Compliance With Government Auditing Standards

As previously noted, the legislation mandating this performance audit directed that it be conducted in accordance with applicable government auditing standards. It is the responsibility of the Firm to ensure that all such standards are adhered to. Offerors are directed to the publication *Government Auditing Standards, 1994 Revision*, by the Comptroller General of the United States, United States General Accounting Office – commonly referred to as the “Yellow Book.”

Generally, the Yellow Book standards reflect professionalism and “common-sense” in conducting audits of this type. Because of their breadth and potential impact on other audit activities and issues, three areas deserve special mention:

- **Working Papers**: See Section II-3 c. for specific requirements.
- **Assessing Management Controls**: “Management controls” are the tools used by management to ensure its goals are met. They include items such as policies and procedures, planning processes and staffing practices. The standards require that those conducting an audit obtain an understanding of the management controls that are relevant to the audit.

- **Assessing the Reliability and Validity of Computer Data:** If computer data are significant to an audit's findings and conclusions, it is required that they be tested to validate their reliability.

Reference Documents

In the process of managing its operations and planning for the future, WSF has conducted a number of management planning studies. In conducting this performance audit, the Firm should review past management and planning studies, as well as other studies, financial audits, plans and budgeting documents and applicable statutes and regulations, to assess the status of the ferry system's use of these management tools and compliance with legislative direction. Relevant documents that should be reviewed include:

- Transportation Resource Manual, Legislative Transportation Committee, February 1997.
- Key Facts: A Summary of Useful Transportation Data, 1997.
- Government Auditing Standards, 1994 Revision.
- Washington's Transportation Plan 1997-2016.
- 1997--1999 Current Law Budget for the Department of Transportation.
- State Highway System Plan 1997-2016, March 1996.
- 1997-99 Transportation Budget.
- 1997-1999 Agency Request Proposal for the Department of Transportation (submittal based on a request to increase transportation taxes).
- State Auditor's Office Audit Reports for FY 92, 93, 95 & 96.
- 1991 Booz-Allen and Hamilton Study of Vessel Refurbishment Programs.
- Report of Vessel Engineering Initiatives in Management of Complex Projects, January 16, 1997.
- Washington State Ferries Tariff Review Phase II, December 1994.
- Passenger Only Ferry Service Evaluation Preliminary Report, December 1986.
- Mukilteo Multimodal Terminal and Access Study, June 1995.
- Effects of Fauntleroy Terminal Closure on Travel Patterns, January 1994.
- Implementation Plan: Passenger Only Ferry Program, December 1993.
- Washington State Ferries 1993 Origin-Destination Surveys.
- Ferry Study: Anacortes, San Juan Islands, Sidney, December 1990.
- Washington State Ferry System Transportation Commission Workshop, January 15, 1997.
- Preliminary Vessel Repair Facility Location Study (undated).
- RCW 47.64 - Marine Employees—Public Employment Relations.

- WAC 316.85 - Marine Employees' Commission.
- Marine Employees' Commission, "What You Should Know About the Marine Employees' Commission," December 1996.
- Carey Associates, Inc. Report on the Marine Employees Commission's Processes, 1988.
- "Report of the Governor's Emergency Special Commission on Ferries," September 1981.
- House Bill 2165.
- Engrossed Substitute Senate Bill 6061.
- George Scott, "The Politics of Transportation," Columbia, Spring 1995, pp. 13-19.

For use by Offerors, many of the foregoing documents can be accessed electronically at the JLARC website: <http://www.leg.wa.gov/www/lbc/>.

For those studies that cannot be accessed electronically at the JLARC website at this time, JLARC will provide hard copies of noncopyrighted materials to Offerors upon request.

II-3 REPORTING AND DELIVERY REQUIREMENTS

- a. Work Plan. All work shall be in accordance with an approved work plan:
 - (1) Within twenty (20) calendar days after the award date of the contract, the Firm shall develop a final work plan to meet the work requirements in Sections II-1 and II-2 of this RFP, and any changes necessary based on additional information or input provided by JLARC staff. The work plan shall include:
 - The specific tasks and sub-tasks to be performed;
 - The expected duration and level of effort in hours by person;
 - The specific data that will be needed, along with data sources;
 - A schedule for performing the tasks;
 - The milestone dates, and
 - The management, supervisors, staff and affiliates assigned to the tasks.
 - (2) The final work plan is subject to approval by the Legislative Auditor. Any subsequent changes shall also require approval by the Legislative Auditor.

- b. Deliverables. Major deliverables will be due according to the following schedule.

Wednesday	On or about September 24, 1997	Final work plan
Monday	On or about September 22, 1997	Entrance conference
Friday	January 23, 1998	Draft preliminary report
Monday	February 9, 1998	Final preliminary report and briefing package
Monday	March 9, 1998	Final report and briefing package

- (1) A work plan as specified at Section II-3a.
- (2) An entrance conference to be coordinated by JLARC staff.
- (3) Weekly progress reports as specified at Section II-3d.
- (4) No later than January 23, 1998, the Firm shall deliver to the JLARC office a ***draft*** preliminary report as specified in Section II-3f. This draft report will be provided to agency staff and to the Technical Review Advisory Committee for purposes of ***technical review*** and comment. JLARC staff will also participate in the technical review process.
- (5) An exit conference (or conferences) with the agency to be coordinated by JLARC staff for the purpose of explaining and promoting understanding and use of the findings, conclusions and recommendations, and understanding the agency's response to them.
- (6) A meeting with the Technical Review Advisory Committee to receive comments on the draft preliminary report.
- (7) No later than February 9, 1998, the Firm shall deliver a ***final*** preliminary report to the JLARC office as specified in Section II-3f. This final preliminary report should incorporate all changes made necessary, as determined jointly by the Firm and JLARC staff, as a result of the technical review process.
- (8) No later than February 9, 1998, the Firm shall deliver to the JLARC office a draft briefing package (text, video, slides, and other materials and exhibits) to be used for presentation purposes.

- (9) No later than March 9, 1998, the Firm shall deliver to the JLARC office the final audit report as specified in Section II-3f, and a copy of all audit working papers. This final report should incorporate any changes deemed necessary, as determined jointly by the Firm and JLARC staff, as a result of formal agency and public review as described in Section II-3f through h.
- (10) No later than March 9, 1998, the Firm shall deliver to the JLARC office the final briefing package.

c. Working Paper Requirements.

- (1) The Firm shall obtain and document in writing sufficient, competent evidential matter to support the performance audit specified in this RFP.
- (2) In order to facilitate reviews of working papers by JLARC staff, the Firm shall exercise strict control over the preparation and maintenance of working papers.
- (3) Working papers are to be organized, numbered and cross-referenced in a logical manner to enable easy traversing between the work plan, working paper sections, conclusions, findings and source documents.
- (4) The working papers resulting from this performance audit shall be owned by JLARC and shall be retained for a period of at least six years or until any claim brought under this RFP is settled. The Firm may retain a copy of working papers supporting this performance audit.
- (5) The performance audit report and working papers supporting it are confidential until the preliminary report is officially released to the public by JLARC. Prior to the official release of the report, working paper access shall be limited to JLARC staff and the Firm.

d. Progress Reporting.

The Firm shall provide JLARC weekly reports outlining the following:

- A summary of any preliminary findings or issues of significance.

- Risks or issues which might affect the schedule or level of effort as planned and their required resolution time frames.
- Progress against planned tasks and activities for the particular reporting period.
- The specific accomplishments achieved during the reporting period, including a listing of persons contacted or interviewed and documents reviewed.
- Planned tasks and activities for the next reporting period, including anticipated contacts and research plans.
- Disposition of previously reported risk or issues.
- Proposed revisions to the work plan, specifically noting any suggested changes in schedule or assumptions. (Note: as indicated in Section II-3a, actual revisions to the work plan must be approved by the Legislative Auditor.)

The progress reports shall be organized into narrative language that is clear, concise, and structured to be easily understood by a third party.

e. Exit Conferences.

JLARC staff shall arrange one or more exit conferences between the Firm and appropriate agency representatives.

f. Preliminary and Final Reports.

The preliminary and final reports should synthesize findings, conclusions, and recommendations resulting from a thorough and cumulative assessment of all completed work described in Section II. Findings and conclusions must be clearly documented as resulting from field work and analysis done for this study. Recommendations must be logically related to the findings and conclusions, be limited to substantive matters, and recognize practical and fiscal constraints. Recommendations should also be formatted so that they include a proposed implementation date, a statement of fiscal impact, and a statement as to whether implementation will require legislative changes.

The reports must include an attestation that the audit work was conducted in accordance with applicable Government Auditing Standards.

The Firm shall be required to follow general guidance provided by JLARC staff as to the format and length of reports and briefings, as well as the level of detail appropriate for intended audiences. (Samples of JLARC work plans, protocols, and reports are available upon request to the RFP Coordinator.)

At such time as the *preliminary* report is formally presented to JLARC, it will be made public. It will also be transmitted to the agency (WSDOT/WSF) and the Office of Financial Management (OFM) for formal comment.

The agency and OFM responses will be incorporated into the *final* report. JLARC audit protocols provide for the committee to consider and adopt the proposed final report in a public meeting. At that time, if the committee wishes to make any statement itself, or convey its own recommendations, the committee will act by motion to do so. This becomes an addendum to the audit report but does not affect or change the Firm's findings, conclusions or recommendations.

g. Agency/OFM Responses and Firm's Comments.

The agency and OFM will be requested to respond in writing to the preliminary report within 20 days of its transmittal to them. If any changes result from the exit conference or written responses, or are considered necessary to otherwise respond to questions or comments on the preliminary report, the Firm shall be required to make revisions as necessary in the final report. The Firm shall comment on Agency and OFM responses in the final report.

h. Public Presentations and Comment.

The Firm will be expected to make at least three oral presentations, in public meetings, to legislative committees including, but not limited to, JLARC. Up to three additional presentations could also be required. Public comment may be taken at any of these meetings. As appropriate, the Firm may need to provide follow-up on questions or comments raised at these meetings.

SECTION III

OFFEROR QUALIFICATIONS

III-1 MANDATORY MINIMUM QUALIFICATIONS

Offerors must satisfy all of the following mandatory minimum qualifications as outlined below in order to be considered for the contract award:

- a. The Offeror must accept the written contract as supplied by the JLARC. It is therefore recommended that the Offeror seek the approval of its legal representative as to the contract format set forth as Exhibit “C” prior to submittal of a proposal.
- b. The Offeror must agree to provide the minimum services as detailed in Section II, “Statement of Work,” as well as all other requirements stated in the RFP.
- c. The Offeror must provide assurance that the key professionals and/or the organization must not have, nor could they potentially have, a material conflict of interest with WSDOT, WSF or JLARC or any personal, external or organizational impairments as described in the Government Auditing Standards, 1994 Revision, as issued by the United States General Accounting Office.
- d. The Offeror must demonstrate a special combination of proficiency:
 - 1) in conducting performance audits of state agencies with transportation responsibilities; and 2) the Offeror must have an extensive knowledge of the shipping industry in relationship to the organizational structure, operations, capital program management practices, procedures and performance, and financial management of taxes, fares and other transportation funds.
- e. The Offeror must have demonstrated expertise and experience in the following specific areas:
 - (1) The review and analysis of performance audits of large public agencies and funds.
 - (2) Knowledge of transportation systems and transportation planning and capital investments.
 - (3) Understanding of reporting and oversight relationships of transportation operations, capital improvement programs and transportation funds.

- (4) Detailed knowledge of marine operations, including safety requirements, capital planning and construction, land-side operations, infrastructure maintenance and general management practices.
- (5) Agencywide operations management, including the organizational structure and policies and procedures of agencies responsible for the oversight and management of the ferry system.
- (6) Performance audits of state agencies, including the ability to craft recommendations, based on findings, that improve agency performance, identify fiscal impacts, and formulate policy options.
- (7) State government administrative, operating and policy-making environment.

SECTION IV

GENERAL INFORMATION

IV-1 DEFINITIONS

“Offeror” or “Firm” means an entity intending to submit or submitting a proposal for the project.

“Apparently Successful Offeror(s)” or “Apparently Successful Firm(s)” means the offeror(s) or firm(s) selected by the Legislative Auditor as the most qualified entity to perform the stated services.

“Legislative Auditor” means the chief executive officer of JLARC.

“JLARC” means the Washington State Joint Legislative Audit and Review Committee.

“RFP” means this Request for Proposal, any *addendum* or *erratum* thereto, offerors' written questions and the respective answers, and any related correspondence that is: (1) addressed to all offerors, and (2) signed by the Legislative Auditor.

“WSDOT” or “Agency” means the Washington State Department of Transportation.

“WSF” means the Washington State Ferry System.

Contract definitions are provided in Exhibit C.

IV-2 COMPENSATION AND PAYMENT

The compensation for the duration of this contract shall be fixed from the fee included in the Offeror's proposal. This fixed compensation shall include all costs, including all travel for up to three oral presentations in the Olympia/Seattle area to legislative committees or the Temporary Advisory Committee.

Invoices shall be submitted to:

Bob Thomas, Principal Management Auditor/Supervisor
Joint Legislative Audit and Review Committee
506 16th Avenue SE
Olympia, WA 98501-2323

Progress billing will be allowed after completion of 25, 50, 75 and 100 percent of the contract. The Firm must demonstrate through progress reporting that the invoiced percentage of work is complete and must certify to this percentage of completion.

Payment for each billing shall be made by JLARC to the Firm after JLARC has determined that the progress of the project and the quality of the work is satisfactory. This determination will include consideration of the progress of the project in comparison to the work plan. If JLARC determines that the Firm has not made satisfactory progress in accordance with the work plan, it may withhold payment until the necessary work is completed to its satisfaction.

IV-3 EXPECTED TIME PERIOD FOR CONTRACT

The period of contract performance shall be from September 11, 1997, through June 30, 1988.

IV-4 ELIGIBILITY TO COMPETE

Any firm which, either as a parent company, subsidiary, or affiliate, is currently performing consulting services for WSDOT or WSF may **not** compete in this procurement. The Firm, or any subsidiary, affiliate or parent company thereof, selected as a result of this procurement may **not** during the term of the resulting contract, and any extensions thereto, compete in any subsequent WSDOT or WSF procurement, the main purpose of which is to hire a firm or firms for consulting purposes, or otherwise contract with WSDOT or WSF.

SECTION V

INSTRUCTIONS FOR COMPLETING AND SUBMITTING PROPOSALS

V-1 RFP CONTACT

The RFP Coordinator listed below is the sole point of contact for this RFP, except as expressly authorized by the Legislative Auditor. Throughout the duration of the procurement process, all communications are to be directed to the contact listed below. Contact with other JLARC or WSDOT or WSF staff after issuance of this RFP, except as expressly authorized by the Legislative Auditor, will disqualify the Offeror.

Bob Thomas
Joint Legislative Audit and Review Committee
506 16th Avenue SE
Olympia, WA 98501-2323

Telephone: (360) 786-5187
FAX: (360) 787-5180

E-mail: thomas_bo@leg.wa.gov
Web: <http://www.leg.wa.gov/www/lbc/>

The RFP Coordinator may require that inquiries be put in writing.

“Letter of Intent to Bid,” in the format of *Exhibit “B,”* must be received at the JLARC office by July 31, 1997, at 4:30 p.m. Pacific Daylight Time.

Offerors who submit the “Letter of Intent to Bid” prior to the deadline will be sent any modifications of the RFP and a written record of additional substantive information provided to prospective offerors (such as responses to telephone inquiries) through July 31, 1997. Inquiries concerning clarification of some aspect of the RFP will be accepted beginning July 21, 1997. No inquiries about the RFP will be accepted after July 31, 1997.

Firms who either choose not to submit a “Letter of Intent to Bid” or fail to meet the deadline for its submittal may submit a proposal in response to this RFP, but must do so without the benefit of the information referenced in the preceding paragraph.

V-2 SCHEDULE OF PROCUREMENT ACTIVITIES

The following schedule of activities must be adhered to by all Offerors. Offerors mailing proposals should allow normal mail delivery time to

ensure timely receipt of their proposals by the RFP Coordinator listed in Section V-1 of this RFP.

<u>Event</u>	<u>Date</u>
Mail RFP to Offerors/make available on Internet	July 18, 1997
Offeror's questions and letters of intent to bid due	July 31, 1997
Mail record of answers to questions received	August 8, 1997
Proposal due date	August 18, 1997
Proposal evaluations completed	August 25, 1997
Finalist oral interviews	September 1, 1997
Announcement of Apparently Successful Offeror(s)	September 4, 1997
Contract begins	September 11, 1997

V-3

SUBMITTING PROPOSALS

- a. Submittal of ten (10) copies of the proposal is required. One copy must have original signatures and nine copies can have photocopied signatures.
- b. One of the ten copies must be **unbound** (one of the copies with photocopied signatures).

The unbound copy must be marked "**Copy for Reproduction,**" and **must** be formatted as follows: (a) no divider sheets or tabs; (b) text only on **one** side of the sheet of paper (*i.e.*, no double-sided pages); and (c) those pages containing "confidential" information **removed**, but a cover index for this copy attached bearing the Offeror's name setting forth which page(s) has (have) been removed because they contained "confidential" information.

Ten (10) copies of the proposal (including the unbound copy) shall be sent or delivered to the following address on, or before, 4:30 p.m., Pacific Daylight Time, August 18, 1997:

Bob Thomas
 Joint Legislative Audit and Review Committee
 506 16th Avenue SE
 Olympia, WA 98501-2323

Offerors mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. Proposals may not be transmitted using electronic media such as facsimile transmission. Notwithstanding the provisions of RCW 1.12.070, postmarks will not be considered as date received for the purposes of this RFP. **Late proposals will not be accepted, nor will time extensions be granted.**

The outside of the proposal packaging is to clearly identify the RFP being responded to.

All proposals and accompanying documentation become the property of the JLARC and **will not be returned.**

V-4 PROPOSAL FORMAT AND CONTENT

Proposals should be prepared on 8½ x 11 inch paper; however, 11 x 14 inch paper is permissible for charts, spreadsheets, etc.

All of the conditions set forth in this section must be included, and addressed thoroughly and completely by the Offeror before JLARC will accept a response to this RFP.

The proposal should consist of seven main sections: 1) Executive Summary, 2) General Information, 3) Technical Proposal, 4) Management Proposal, 5) Experience of the Offeror, 6) Cost Proposal, and 7) “Certifications and Assurances” form (Exhibit A). Section 3 shall not exceed 20 single-spaced pages, and the remaining sections together shall not exceed 20 single-spaced pages. Proposals shall be in sufficient detail to permit evaluation and shall include tabs (except for the unbound copy described in paragraph V-3 B) separating the individual sections. Please keep any attachments to a minimum.

SECTION 1: Executive Summary

Please set forth a stand-alone executive summary of the contents of your Firm’s proposal, including all the subsection topics set forth therein. Take particular care in its preparation, for if your Firm is selected as a finalist, this document may be used as a guide in conducting an oral interview. **DO NOT** structure it in the format of a reference to sections of your Firm’s overall proposal.

SECTION 2: General Information

Please provide the material specified below. If the proposal includes a subcontract or joint venture, the Offeror must submit specific information for each subcontractor or joint venture member.

- a. Name, mailing address, phone and FAX number of legal entity with whom the contract is to be written.
- b. Name, mailing address, phone and FAX number of primary contact.
- c. Name, mailing address and phone number(s) of principal officer(s).
- d. Legal status of organization (*e.g.*, sole proprietorship, partnership, corporation, etc.).
- e. Federal employer identification number.
- f. Washington State Department of Revenue Registration Number (UBI number) if applicable.
- g. The location of the facility from which the Offeror will operate.
- h. If the Offeror or anyone associated with the Offeror has been an employee of the state of Washington during the past two years, indicate his/her job title, agency by which employed and separation date.
- i. If the Offeror or anyone associated with the Offeror contracted with the state of Washington during the past two years, identify the agency and contract number and briefly describe the contract.

SECTION 3: Technical Proposal

The technical proposal should state the approaches, methods and criteria to be used by the Firm for accomplishing the Statement of Work as outlined in Section II of this RFP. The potential measures and approaches included under each audit issue in Section II-2 should guide the Firm in its development of the technical proposal, but the Firm may modify, improve or expand the measures and approaches in order to enhance the ability of the Firm to successfully accomplish the Statement of Work within the reporting period specified in Section II-3 b of this RFP. Furthermore, the Firm may reorder or regroup the audit issues to be addressed in order to best present its approach. ***The technical proposal should not be simply a restatement of the audit issues, measures and approaches listed in Section II-2.*** The proposal should include a comprehensive work plan

describing the tasks, sub-tasks, level of effort, schedule, methodologies, specific data that will be needed, data sources, and any related coordination work by JLARC staff in aid of the Firm's work. The proposal should also identify any risks the Firm perceives in accomplishing the statement of work within schedule, and if so, provide a contingency plan.

SECTION 4: Management Proposal

Describe how your Firm proposes to organize, manage, control and report on the status of the project. Identify all critical milestones.

Include an organization chart indicating the lines of authority for all personnel involved in performance of the potential contract. Indicate who within the Offeror's organization will have final authority for the work.

Identify the staff who will be assigned to the project. Discuss their responsibilities and amount of time devoted to the project by task or audit issue area. Succinctly state their qualifications and relevant experience. Attach resumes.

Identify the staff who will conduct on-site field work in Washington and how much time they will spend in the state on this project.

Note: The Offeror must commit that the staff identified in the proposal will actually be assigned to this project. Any substitution must be approved by JLARC.

SECTION 5: Experience of the Offeror

Indicate the Offeror's experience relevant to this project. Highlight the Offeror's experience with legislative or other public policy-making bodies.

List major contracts or other employment history during the last five years that relate to the Offeror's ability to perform the services called for under this RFP. If appropriate, include the contract numbers, period of performance, contact persons and telephone numbers.

Indicate if the Offeror within the last five years has had a contract terminated for default, defined as notice to stop performance. Provide full details, including the other party's name, address and telephone number.

The Firm selected will be expected to produce professional quality written and oral reports that meet JLARC standards for analysis and that clearly document the basis for findings, conclusions and recommendations. Please indicate any relevant experience and, if possible, provide a sample of work that demonstrates the Offeror's expertise in this area.

SECTION 6: Cost Proposal

JLARC intends to enter into a fixed-term contract. The services detailed in Section II of this RFP are the basis for the Offeror's fee. The fee for work performed shall be a fixed fee for the requested services, and all travel, including up to three oral presentations in the Olympia/Seattle area to legislative committees or the Temporary Advisory Committee.

The fixed-price cost proposal must include a fully detailed budget with staff costs and non-staff costs necessary to accomplish the tasks and to produce the deliverables. The staff must be identified by name, hourly rate, number of hours devoted to the project, and type of work.

JLARC may request the Firm to make more than three oral presentations in the Olympia/Seattle area to legislative committees or the temporary advisory committee. Offerors should separately specify staff costs associated with each additional presentation. Travel expenses associated with additional presentations will be reimbursed at rates established by the state of Washington Office of Financial Management (OFM).

SECTION 7: Certifications and Assurances Form

The Certifications and Assurances form, *Exhibit "A,"* must be signed by the president or chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship or all members of a joint venture included in the Offeror's proposal.

V-5

PROPRIETARY INFORMATION

All proposals received shall be public records but shall remain confidential until the successful Offeror(s) resulting from this RFP, if any, is announced by the Legislative Auditor. Thereafter, proposals shall be available for public inspection and copying as required by Chapter 42.17 RCW (the principal Washington State statute pertaining to accessibility to public records) except as exempted in that chapter, by other law or JLARC's policies and procedures. Offerors are advised that the permissible exemptions from public disclosure pursuant to Chapter 42.17 RCW are very narrow in scope and will be strictly construed. In the event that an Offeror desires to claim portions of its proposal as exempt from disclosure under the provisions of the aforementioned RCW, it is incumbent upon that Offeror to clearly identify those portions in a proposal transmittal letter. The transmittal letter must identify the page and particular exemption(s) from disclosure upon which it is making its claim. Further, each page claimed to be exempt must be clearly identified by the word "CONFIDENTIAL" printed on the lower right-hand corner of the page. ***Designating the entire proposal as confidential is not acceptable and will not be honored.***

If an official request is made to view an Offeror's proposal, the Legislative Auditor shall respond in accordance with RCW 42.17.250 *et seq.* If any of the specifically requested information is marked as “confidential” in the proposal but in the opinion of the Legislative Auditor does not conform to any one of the enumerated exemptions from disclosure, such information will not be made available until three (3) business days after the affected Offeror has been given telephonic notice that the information has been requested. If the affected Offeror has undertaken proceedings to obtain a court order restraining the Legislative Auditor from disclosure of the “confidential” information requested within those three (3) days, the Legislative Auditor will not disclose such information until resolution of the court proceeding. Upon failure to make application for judicial relief within the allowed period, the information will be disclosed.

NOTE: The proposal of the successful Offeror(s) will be attached to the resulting contract and incorporated therein by that attachment. Therefore, as part of a public state agency contract, the *entirety* of the successful Offeror(s)' proposal will be subject to public disclosure regardless of any claim of confidentiality or previously applicable statutory exemption. Nevertheless, should a successful Offeror obtain a court order from a Washington State court of competent jurisdiction prohibiting disclosure of parts of its proposal prior to the execution of the contract incorporating the same, the Legislative Auditor shall comply with the court order. The burden is upon a successful Offeror to evaluate and anticipate its need to maintain confidentiality and to proceed accordingly. Timeliness will be of the essence; a delay in execution of the contract to accommodate a petition to the courts will not be allowed.

V-6 RECORDS RETENTION

After the date of the announcement of the Apparently Successful Offeror(s), the Legislative Auditor will retain one master copy of each proposal received for a period of six years or until any claim brought under this RFP is settled.

V-7 PREPARATION AND TRAVEL COSTS

JLARC will not be liable for any costs associated with preparation and presentation of a proposal submitted in response to this RFP.

The Offeror assumes responsibility for their personnel's travel and associated costs as they relate to the bidding on this project. These costs must be considered in the bid cost of the proposal.

V-8 ADDENDA TO THE RFP

In the event it becomes necessary to revise any part of this RFP, an *addendum* or *erratum* will be provided to all Offerors who have indicated an intention to submit a proposal.

V-9

SUBMISSION LIMIT

After submission, Offerors will not be allowed to amend the proposal. Responses consisting solely of marketing material are not acceptable and will be rejected.

SECTION VI

EVALUATION OF PROPOSALS

VI-1 EVALUATION PROCEDURE

Proposals will be reviewed and evaluated by a panel selected by JLARC staff. Written submittals, subsequently requested materials and oral presentations, if any, will be used in selecting the winning proposal. After initial evaluations, the Legislative Auditor may select a small group of Offerors as finalists for oral presentations to the evaluation panel. The Legislative Auditor reserves the right, at her sole discretion, to reject any and all proposals received without penalty. Subject to the approval of the JLARC Executive Committee, the final selection, if any, will be that proposal which, in the opinion of the Legislative Auditor after review of all submissions by the evaluation panel, best and sufficiently meets the requirements set forth in the RFP and is in the best interest of the citizens of Washington.

The selection will be accomplished through the following process.

- a. Initially, the JLARC Office will review each RFP for compliance with minimum mandatory requirements as stipulated within the RFP. Proposals found non-compliant will be rejected from further consideration. Proposals not rejected will then be evaluated using the criteria outlined in Section VI-1.B..
- b. The evaluation panel will evaluate the acceptable proposals and assign numeric scores based on the following weights:

Technical Proposal	40%
Management Proposal	20%
Offeror's Expertise	20%
Cost Proposal	20%

Note: From the original amount of funds provided for the performance audits of transportation agencies for state Fiscal Years 1997-1999, the Legislative Auditor has targeted \$375,000 for the scope of work and services to be provided that are specified in this RFP.

JLARC reserves the right to ask for resubmittals of RFPs by finalists, as determined by the Legislative Auditor. Finalists in the RFP process may be asked to make oral presentations in Olympia to the evaluation panel and/or the JLARC regarding their proposal. If finalists are asked to make an oral presentation, the final selection of the successful Offeror may be based on a combination of the evaluation of the written RFP and the oral presentation.

SECTION VII

JLARC RIGHTS

VII-1 PROPOSAL REJECTIONS

Determination of clarity and completeness in the responses to any of the provisions in this RFP will be made solely by the Legislative Auditor. The Legislative Auditor reserves the right to require clarification, additional information, and materials in any form relative to any or all of the provisions or conditions of this RFP.

The Legislative Auditor reserves the right to reject any or all proposals at any time prior to the execution of a contract acceptable to the Legislative Auditor, without any penalty to the Legislative Auditor.

VII-2 CONTRACT AWARD

The Legislative Auditor intends to award the contract to the Offeror(s) with the best combination of attributes based on the evaluation criteria listed in Section VI-1.b. of this RFP.

Should the Legislative Auditor fail to negotiate a contract with the Apparently Successful Offeror(s), the Legislative Auditor reserves the right to negotiate and contract with the next most qualified Offeror(s). The Legislative Auditor also reserves the right to contract with a joint venture. Accordingly, the Offeror may freely join with other persons or organizations for the purpose of presenting a single proposal. (See section VII-6, below).

VII-3 PUBLICITY

No informational pamphlets, notices, press releases, research reports, and/or similar public notices concerning this project may be released by the Apparently Successful Offeror(s) without obtaining prior written approval from the Legislative Auditor.

VII-4 WAIVERS

The Legislative Auditor reserves the right to waive specific terms and conditions contained in this RFP.

It shall be understood by Offerors that the proposal is predicated upon acceptance of all terms and conditions contained in this RFP unless the Offeror has obtained such a waiver, in writing, from the Legislative Auditor prior to submission of the proposal.

Any waiver granted, prior to formal negotiation with the Apparently Successful Offeror, will be granted to all Offerors.

VII-5 JOINT VENTURES

The Offeror may submit a proposal in conjunction with other Offerors as a joint venture. A joint venture is defined as an association of two or more firms formed for the specific purpose of submitting a bid on a specific project. A copy of the joint venture agreement shall be submitted with the proposal and shall specify the name under which the joint venture will operate. The agreement must also include the names of those individuals authorized to sign proposals, contracts and other documents on behalf of the joint venture. It shall contain provisions which will unequivocally bind the parties, jointly and severally, to any contract entered into thereunder.

SECTION VIII

MISCELLANEOUS TERMS AND CONDITIONS

VIII-1 SUCCESSFUL OFFEROR NOTIFICATION

On or about the date specified in section V-2, "Schedule of Procurement Activities," of this RFP, a letter indicating whether the Offeror was selected as "the Apparently Successful Offeror" will be mailed to each Offeror who submitted a proposal in accordance with the procedures specified in this RFP.

An unsuccessful Offeror may request a debriefing conference within seven days after the date of the notification letter. The debriefing conference shall be limited to a critique of the unsuccessful Offeror's proposal compared with the successful proposal.

VIII-2 RIGHT TO PROTEST and PROTEST PROCEDURES

Any protest will be handled by the following procedure, which constitutes the sole administrative remedy available to Offerors:

- Protests must be preceded by a debriefing conference and be submitted within seven days after the conference.
- All protests must be written, signed by the protesting party, addressed to the RFP Contact and state all facts and arguments and provide all documents upon which the protest is based.
- If the protest affects the interest of another Offeror, that Offeror shall be given the opportunity to respond with any information relevant to the protest.
- The JLARC Executive Committee will review all protests and make the final decision.

VIII-3 GENERAL CONTRACT TERMS AND CONDITIONS

Exhibit "C" of this RFP contains the contract form, including general terms and conditions that the JLARC office will use in the final negotiated contract with the successful Offeror(s).

NOTE: THE SUBMISSION OF A PROPOSAL CONSTITUTES ACCEPTANCE BY THE OFFEROR OF THESE GENERAL TERMS AND CONDITIONS. YOUR FIRM'S LEGAL CONSULTANT SHOULD

REVIEW THE ATTACHED CONTRACT. IF YOUR FIRM IS UNWILLING OR UNABLE TO ACCEPT THE TERMS OF THE CONTRACT SET FORTH, YOU ARE ENCOURAGED NOT TO SUBMIT A PROPOSAL.

Exhibit A
Certifications And Assurances

The Offeror makes the following certifications and assurances as a required element of the proposal to which it is included, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award and continuation of the contract resulting from this RFP. Any exceptions to these certifications and assurances must be described in full detail on a separate page(s) and attached to this document. The Legislative Auditor reserves the right to determine if such exception is substantive and a basis for disqualification.

1. INDEPENDENT PREPARATION AND COST DETERMINATION

- Prices and/or cost data have been arrived at independently, without consultation, communications, or agreement with any other Offeror or with any competitor for the purpose of restricting competition.
- Unless otherwise required by law, the prices and/or cost data submitted have not knowingly been disclosed by the Offeror and will not knowingly be disclosed by the Offeror(s), prior to award, directly or indirectly to any other Offeror or to any competitor.
- No attempt has been made or will be made by the Offeror to induce any other person or Firm to submit or not submit a proposal for the purpose of restricting competition.
- In preparing this proposal, assistance has not been provided by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal and who was assisting other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this proposal. Any exceptions to these assurances are described in full detail on a separate page and attached to this document.

NOTE: In order to ensure fair and equal competition between all Offerors, the development of proposals with the assistance of organizations or individuals outside the Offeror's organization must be declared in the proposal and the name(s) of such organizations or individuals provided. Failure to acknowledge such assistance and to identify those providing it may result in the disqualification of the proposal. No contingent fees for such assistance will be allowed to be paid under any contract or grant resulting from this RFP. HOWEVER, the Offeror may freely join with other persons or organizations for the purpose of presenting a single proposal.

2. PRICE WARRANT

The costs quoted for services in response to this RFP do not exceed those charged any other client for the same services.

3. NO CONFLICT OF INTEREST

The Offeror certifies that no condition exists with respect to the Offeror, or any of its employees, regarding any current or past relationship with the Joint Legislative Audit and Review Committee or the Washington State Department of Transportation that violates Chapter 42.52 RCW, "Ethics in Public Service."

4. PROPOSAL EVALUATION PERIOD

The attached proposal is a firm offer for a period of 120 days following receipt by the JLARC office and may be accepted by the Legislative Auditor without further negotiation at any time within the 120-day period.

5. CONTACTING REFERENCES

JLARC is hereby granted permission to contact any references or past contracting clients listed in response to this RFP.

6. PREPARATION COSTS

The Offeror understands that JLARC will not provide reimbursement for any costs incurred in the preparation of this proposal. It is further understood that JLARC reserves the right to reject all proposals and make no contract award.

7. ACCEPTANCE OF CONTRACT TERMS

The General Contract Terms and Conditions referenced in Section VIII-6 of this RFP are attached hereto as Exhibit "C." The Offeror, by submission of a response to this RFP, accepts these Terms and Conditions as part of their final contract, if selected.

8. COMPLIANCE WITH CHAPTER 39.29 REVISED CODE OF WASHINGTON

The Offeror certifies that no condition exists which would result in noncompliance with Chapter 39.29 RCW, Personal Services Contracts.

The Offeror understands that a firm that knowingly violates this chapter in seeking or performing work under a personal services contract shall be subject to a civil penalty of \$300 or 25 percent of the amount of the contract.

The person signing below warrants that all of the foregoing certifications and assurances are true to the best of their knowledge after reasonable efforts to obtain the truth.

Firm Name (typed)

Legal Name (typed)

Address (typed)

Chief Executive Officer, Name (typed)

Chief Executive Officer, Signature

Chief Executive Officer, Title (typed)

Date

Exhibit B
Letter Of Intent To Bid

On behalf of my firm, I hereby certify that we intend to submit a proposal to provide performance audit services to the Joint Legislative Audit and Review Committee. I have read the Request for Proposal for the procurement of these services and accept the conditions set forth therein.

Firm Name (typed)

Legal Name (typed)

Address (typed)

Chief Executive Officer, Name (typed)

Chief Executive Officer, Signature

Chief Executive Officer, Title (typed)

Date

This letter of Intent to Bid must be received by the Joint Legislative Audit and Review

Committee by 4:30 p.m., July 31, 1997, Pacific Daylight Time. It may be mailed or faxed to:

Bob Thomas, RFP Coordinator
Joint Legislative Audit and Review Committee
506 16th Avenue SE
Olympia, WA 98501-2323

FAX: (360) 786-5180

PLEASE NOTE: If you submit this form and later decide not to submit a proposal, please notify us by telephone at (360) 786-5171. Thank you.

Exhibit C
Contract Form/General Terms and Conditions

**PERSONAL SERVICE CONTRACT
 FOR THE
 PERFORMANCE AUDIT OF THE WASHINGTON STATE FFERRY SYSTEM**

STATE OF WASHINGTON

CONTRACT NO. _____

**Joint Legislative Audit and Review Committee
 506 16th Avenue S.E.
 Olympia WA 98501-2323
 (360) 786-5171**

1. THIS CONTRACT is made by and between the Joint Legislative Audit and Review Committee and the firm of _____, hereinafter referred to as the "Contractor."

2. CONTRACTOR: _____

ADDRESS: _____

Federal Employer Identification No.: _____

Washington Uniform Business Identification No.: _____

3. **SCOPE OF ENGAGEMENT**

The Contractor will provide all services generally described in Section II - Statement of Work of the attached Request for Proposal, hereinafter referred to as the "RFP," as described in the Contractor's proposal, hereinafter referred to as the "Proposal," and as described in detail in the work plan attached hereto as Exhibit _ and made a part of this contract, hereinafter referred to as the "Work Plan."

The Contractor shall produce all oral and written reports described in the RFP, Proposal, and Work Plan. All oral and written work of the Contractor will be expected to be of a professional quality acceptable to the Joint Legislative Audit and Review Committee. In both written and oral presentations, the Contractor's

findings and conclusions must be clearly documented as resulting from field work and data analysis done for this audit. Recommendations must be logically related to the findings and conclusions and must recognize practical and fiscal constraints.

4. It is agreed that Contractor's management staff performing work under this contract are as listed below:

It is understood that staff named above will be responsible throughout the period of this contract. Any changes in management personnel assigned to this engagement require a written contract amendment.

5. Contractor warrants that staff performing work under this contract are free from personal and external impairments to independence.
6. Contractor warrants that staff performing work under this contract possess adequate professional proficiency for the tasks required.
7. If irregularities, fraud, or other significant audit issues which may impact the audit are suspected, the Contractor must immediately notify Bob Thomas, Principal Management Auditor/Supervisor, (360) 786-5187.
8. All instances of noncompliance with state and local laws will be disclosed to Bob Thomas, Principal Management Auditor/Supervisor, (360) 786-5187.
9. The Joint Legislative Audit and Review Committee's contract coordinator is Bob Thomas, Principal Management Auditor/Supervisor, (360) 786-5187.

Contractor's contract coordinator is _____.
(Name and Telephone)

10. It is understood the Joint Legislative Audit and Review Committee's Office is the principle auditing entity and all reports will be approved and issued jointly with the Joint Legislative Audit and Review Committee's office.

11. EFFECTIVE DATE AND DURATION OF CONTRACT

Subject to other contract provisions, the period of performance under this contract will be from date of signing through June 30, 1998, unless sooner terminated as provided herein.

12. All rights and obligations of the parties to this contract shall be subject to and governed by those Special Terms and Conditions contained in the text of this contract and the attached General Terms and Conditions, all hereby incorporated as part of this contract.

In the event of an inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Applicable federal and state statutes and regulations;
- (b) Request for Proposal No. 97-01;
- (c) The terms and conditions of this contract;
- (d) The Contractor's Proposal dated _____ to the Joint Legislative Audit and Review Committee's RFP, including all written information provided with the Contractor's Proposal;
- (e) Any other provisions of the contract whether incorporated by reference or otherwise.

13. COMPENSATION AND PAYMENT

The Contractor agrees that the maximum amount to be paid to the Contractor under this contract shall not exceed \$ _____ in total, and shall include full payment for all work specified in the scope of engagement outlined in item 3. The Contractor agrees that the Joint Legislative Audit and Review Committee is not responsible for providing transportation to and from the audit site and that any travel costs, insurance costs, or other out-of-pocket costs are the responsibility of the Contractor. Any additional services provided by the Contractor and/or Subcontractors would require a written contract amendment approved and processed through the Joint Legislative Audit and Review Committee's Office prior to beginning the additional services.

The Contractor may submit invoices for progress billings at the completion of 25, 50, 75 and 100 percent of the audit work. The Contractor must demonstrate through progress reporting that the invoiced percentage of work is complete and must certify to this percentage of completion. The invoice shall show the name of the Contractor staff performing services under the contract and the hours worked. Each voucher will clearly indicate that it is for services rendered in performance under Contract No. 97-01

All invoices must be submitted for payment to Bob Thomas, Principal Management Auditor/Supervisor, 506 16th Avenue SE, Olympia, WA 98501-2323. Payment for each billing shall be made by JLARC to the Firm after JLARC has determined to its satisfaction that the progress of the project is satisfactory. This determination will include consideration of the progress of the project in comparison to the work plan. If JLARC determines that the Firm has not made satisfactory progress in accordance with the work plan, it may withhold payment until the necessary work is completed to its satisfaction. Payment shall be considered timely if made by the Joint Legislative Audit and Review Committee within 30 days. The Joint Legislative Audit and Review Committee may, in its sole discretion, withhold payments owed the Contractor for services rendered if

the Contractor fails to satisfactorily comply with any term or condition of the contract.

14. The Joint Legislative Audit and Review Committee shall have the authority to monitor the performance of the Contractor, approve actions by the Contractor, and accept or reject any deliverable provided by the Contractor.
15. If any provision of this contract shall be deemed in conflict with any statute or rule of law, such provision shall be deemed modified to be in conformance with said statute or rule of law.
16. This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.
17. This contract shall be subject to the written approval of the Legislative Auditor and shall not be binding until so approved. Only the Legislative Auditor shall have the express, implied, or apparent authority to alter, amend, or waive any clause or condition of this contract.

IN WITNESS WHEREOF: The Joint Legislative Audit and Review Committee and the Contractor have signed this contract.

STATE OF WASHINGTON
JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE

CONTRACTOR

Signature

Signature

Title Date

Title Date

APPROVED AS TO FORM:

By: _____
Assistant Attorney General

Date

GENERAL TERMS AND CONDITIONS

DEFINITIONS -- As used throughout this contract, the following terms shall have the

meaning set forth below:

- A. The "Joint Legislative Audit and Review Committee," or "JLARC," shall mean the Washington State Joint Legislative Audit and Review Committee, any division, section, office, unit or other entity of JLARC or any of the officers or other officials lawfully representing the JLARC.
- B. "Legislative Auditor" shall mean the Legislative Auditor of JLARC, and/or the delegate authorized in writing to act on his/her behalf.
- C. "Contractor" shall mean that firm, provider, organization, individual or other entity performing services under this contract, and shall include all employees of the Contractor.
- D. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

CONTRACTOR NOT EMPLOYEE OF THE AGENCY -- The Contractor and his or her employees or agents performing under this contract are not employees or agents of JLARC. The Contractor will not hold himself/herself out as or claim to be an officer or employee of JLARC or of the state of Washington by reason hereof, nor will the Contractor make any claim or right, privilege or benefit which would accrue to an employee under Chapter 41.06. RCW or Chapter 28B.16 RCW.

NONDISCRIMINATION -- During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS -- In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with JLARC. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

SUBCONTRACTING -- Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Legislative Auditor.

INDEMNIFICATION --The contractor shall defend, protect and hold harmless the state of Washington, JLARC, or any employees thereof, from and against all claims, suits or actions arising from the Contractor's acts which are libelous or slanderous, which result in injury to persons or property, which violate a right of confidentiality, or which constitute an infringement of any copyright, patent, trademark or trade name through use of reproduction of material of any kind.

COVENANT AGAINST CONTINGENT FEES -- The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Contractor for the purpose of securing business. JLARC shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

CONFLICT OF INTEREST -- JLARC may, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Legislative Auditor that there is a violation of the *State Ethics Law Chapter 42.52 RCW*; or any similar statute involving the Contractor in the procurement of, or performance under, this contract.

In the event this contract is terminated as provided above, JLARC shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of JLARC provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Legislative Auditor makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

TREATMENT OF ASSETS --

- A. Title to all property furnished by JLARC shall remain in JLARC's office. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in JLARC upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in JLARC upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by JLARC in whole or in part, whichever first occurs.
- B. Any property of JLARC furnished to the Contractor shall, unless otherwise provided herein or approved by the Legislative Auditor, be used only for the performance of this contract.
- C. The Contractor shall be responsible for any loss or damage to property of JLARC which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- D. Upon loss or destruction of, or damage to, any auditees' or JLARC's property, the Contractor shall notify JLARC thereof and shall take all reasonable steps to protect that property from further damage.

- E. The Contractor shall surrender to JLARC all property of JLARC prior to settlement upon completion, termination or cancellation of this contract.
- F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

NONASSIGNABILITY -- Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Contractor.

RECORDS, DOCUMENTS AND REPORTS -- The Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Legislative Auditor, State Auditor and federal officials so authorized by law, rule, regulation, or contract. The Contractor will retain all books, records, documents, and other materials relevant to this contract for six years after settlement, and make them available for inspection by persons authorized under this provision.

RIGHT OF INSPECTION -- The Contractor shall provide right of access to its facilities to the JLARC, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance and/or quality assurance under this contract.

SAFEGUARDING OF INFORMATION -- The use or disclosure by any party of any information concerning JLARC for any purpose not directly connected with the administration of JLARC or the Contractor's responsibilities with respect to services provided under this contract is prohibited except by written consent of the Legislative Auditor.

During the audit process the auditee will be given the opportunity to review and discuss the audit report for possible clarification before final release. Confidentiality will be maintained throughout the audit process.

RIGHTS IN DATA -- Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by JLARC. Data shall include, but not be limited to: working papers, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Data which is delivered under the contract, but which does not originate therefrom shall be transferred to JLARC with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of and to authorize others to do so; *Provided*, that such license shall be limited to the extent which the Contractor has a right to grant such a license. The Contractor shall exert all reasonable effort to advise JLARC,

at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. JLARC shall receive prompt written notice of each notice of claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. JLARC shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

REGISTRATION WITH DEPARTMENT OF REVENUE -- The Contractor shall complete registration with the Department of Revenue, General Administration Building, Olympia, WA 98504, and be responsible for payment of all taxes due on payments made under this contract.

LICENSING, ACCREDITATION AND REGISTRATION -- The Contractor shall comply with all applicable local, state and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

INDUSTRIAL INSURANCE COVERAGE -- The Contractor shall provide or purchase industrial insurance coverage prior to performing work under this contract. JLARC will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor, or any Subcontractor or employee of the Contractor, which might arise under the industrial insurance laws during performance of duties and services under this contract.

ADVANCE PAYMENTS PROHIBITED -- No payment in advance or in anticipation of services or supplies to be provided under this contract shall be made by JLARC.

SAVINGS -- In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, JLARC may terminate the contract under the "Termination for Convenience" clause, without the five-day notice requirement, subject to renegotiation under those new funding limitations and conditions.

LIMITATION OF AUTHORITY -- Only the Legislative Auditor shall have the express, implied, or apparent authority to alter, amend, modify or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Legislative Auditor.

WAIVER OF DEFAULT -- Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the contract unless stated to be such in writing, signed by the Legislative Auditor and attached to the original contract.

CHANGES AND MODIFICATIONS -- The Legislative Auditor may, at any time, by written notification to the Contractor and without notice to any known guarantor or surety, make changes in the general scope of the services to be performed under the contract.

If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this contract, an equitable adjustment may be made in the contract price or period of performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of Contractor's receipt of the notice of such change; *provided*, however, that the Legislative Auditor may, upon determining that the facts justify such action, receive and act upon such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

DISPUTES – If a dispute should arise between the Contractor and JLARC regarding the performance or expected outcomes of the contract, such dispute shall be referred to the Legislative Auditor for review and decision. If the decision by the Legislative Auditor is not satisfactory to the Contractor, the Contractor may request in writing that the dispute be reviewed by the executive committee of JLARC. Such written request shall be provided to the Legislative Auditor within five days following the Legislative Auditor's decision. The Legislative Auditor shall present the written request to the executive committee at its earliest convenience for review and decision. The decision of the executive committee shall become final and binding.

Unless mutually agreed to by the Legislative Auditor and the Contractor, the work to be performed under this agreement shall not be delayed or stopped during the review of a dispute either by the Legislative Auditor or the JLARC Executive Committee.

TERMINATION FOR DEFAULT -- By written notice, JLARC may terminate the contract, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the mailing, advertising and staff time; *provided*, that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is without Contractor's and/or Subcontractor's control, fault or negligence, the termination shall be deemed to be a Termination for Convenience.

TERMINATION FOR CONVENIENCE -- Except as otherwise provided in this contract, the Legislative Auditor may, by five (5) days written notice, beginning on the second day after the mailing, terminate this contract in whole or in part when it is in the best interests of JLARC. If this contract is so terminated, JLARC shall be liable only for payment in accordance with the terms of this contract for services rendered prior to the effective date of termination.

TERMINATION PROCEDURE -- Upon termination of this contract JLARC, in addition to any other rights provided in this contract, may require the Contractor to deliver to JLARC any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause

shall apply in such property transfer.

JLARC shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by JLARC, and the amount agreed upon by the Contractor and JLARC for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by JLARC, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Legislative Auditor shall determine the extent of the liability of JLARC. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. JLARC may withhold from any amounts due the Contractor such sum as the Legislative Auditor determines to be necessary to protect JLARC against potential loss or liability.

The rights and remedies of JLARC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Legislative Auditor, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
3. Assign to JLARC, in the manner, at the times, and to the extent directed by the Legislative Auditor, all of the rights, title and interest of the Contractor under the orders and subcontracts so terminated, in which case JLARC has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Legislative Auditor to the extent the Legislative Auditor may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to JLARC and deliver in the manner, at the times, and to the extent directed by the Legislative Auditor any property which, if the contract has been completed, would have been required to be furnished to JLARC;
6. Complete performance of such part of the work as shall not have been terminated by the Legislative Auditor; and
7. Take such action as may be necessary, or as the Legislative Auditor may

direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which JLARC has or may acquire an interest.

GOVERNING LAW -- This contract shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County. The Contractor by execution of this contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

SEVERABILITY -- If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

FORCE MAJEURE -- Neither party shall be liable to the other or deemed in default under this contract for any delay or failure to perform its obligations under this contract if such delay or failure arises from any cause or causes beyond the reasonable control of the parties and without fault or negligence of the parties, including and not limited to acts of God, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar circumstances.

SCOPE OF CONTRACT -- This contract and the attachments incorporate all the contracts, covenants and understandings between the parties concerning the subject matter, and all such covenants, agreements and understandings have been merged into this contract. No prior contract or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this contract.

CHANGE OF CONTROL OR PERSONNEL -- Contractor shall promptly and in any case within twenty-four (24) hours notify the Legislative Auditor in writing:

1. If any of the representations and warranties of the Contractor set forth in this contract shall cease to be true at any time during the term of this contract;
2. Of any material change in the Contractor's management staff;
3. Of any change in control of the Contractor or in the business structure of the Contractor; or
4. Of any other material change in the Contractor's business, partnership or corporate organization relating to this engagement. All written notices regarding changes in management staff shall contain the same information about newly assigned management staff as was requested by JLARC in the RFP and such additional information as may be requested by the JLARC office. For purposes hereof, the term "management staff" shall mean those persons identified as senior management in any response to a RFP or who otherwise will exercise a major administrative role or major policy or

consultant role to the provision of the Contractor's services hereunder. All written notices regarding changes in control of the Contractor shall contain the same information about any new controlling entity as was requested by JLARC in the RFP regarding the Contractor and such additional information as may be requested by JLARC.

Approval of these changes rests solely with JLARC and will not be unreasonably withheld.

PAYMENT OF TAXES -- Contractor shall pay all applicable taxes assessed on the compensation received under this contract and shall identify and pay those taxes under Contractor's federal and state identification number(s).